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Subject: Policy & Case Law Bulletin - April 6, 2018
Date: Friday, April 06, 2018 8:31:03 PM

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Office of Policy | Legal Education and
Research Services Division

Policy & Case Law Bulletin

April 6, 2018

White House

- [Presidential Memorandum Regarding Securing the Southern Border of the United States](#)

On April 4, 2018, the President of the United States directed the Secretary of Defense to assist the Department of Homeland Security, including requesting use of National Guard personnel, in “securing the southern border and taking other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country.”

Federal Agencies

DOJ

- [BIA Issues Decision in Matter of Marquez Conde](#) — EOIR

27 I&N Dec. 251 (BIA 2018)

The Board of Immigration Appeals’ holding regarding the validity of vacated convictions in [Matter of Pickering](#), 23 I&N Dec. 621 (BIA 2003), rev’d on other grounds, *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006), is reaffirmed, and the decision is modified to give it nationwide application.

- [Virtual Law Library Weekly Update](#) — EOIR

This update includes resources recently added to EOIR’s internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- [Undeliverable Permanent Resident and Employment Authorization Cards and Travel Documents to be Destroyed After 60 Days](#)

USCIS announced that starting on April 2, 2018, it “will destroy Permanent Resident Cards, Employment Authorization Cards and Travel Documents returned as undeliverable by the

U.S. Postal Service after 60 business days if USCIS is not contacted by the document's intended recipient to provide the correct address."

- [USCIS and CBP to Implement Form I-129 Pilot Program for Canadian L-1 Nonimmigrants](#)

USCIS announced that from "April 30, 2018, to Oct. 31, 2018, the USCIS California Service Center and the U.S. Customs and Border Protection Blaine, Washington, port of entry will implement a joint agency pilot program for Canadian citizens seeking L-1 nonimmigrant status under the North American Free Trade Agreement (NAFTA). This pilot is designed to facilitate the adjudication and admission process of Canadians traveling to the U.S. as L-1 nonimmigrants."

- [DHS Civil Money Penalties Adjusted for Inflation](#)

DHS published a final rule adjusting its civil monetary penalties for 2018 pursuant to the 2015 Act and OMB guidance. The new penalties will be effective for penalties assessed after April 2, 2018, whose associated violations occurred after November 2, 2015.

DOS

- [Amendments to the Terrorist Designation of Lashkar e-Tayyiba](#)

DOS amended the designation of Pakistan-based terrorist organization Lashkar e-Tayyiba (LeT) to include the aliases Milli Muslim League (MML) and Tehreek-e- Azadi-e Kashmir (TAK). The aliases were added to LeT's designations as a Foreign Terrorist Organization (FTO) and as a Specially Designated Global Terrorist (SDGT).

- [60-Day Notice of Proposed Information Collection: Application for Immigrant Visa and Alien Registration](#)

DOS requested public comment until May 29, 2018 regarding the inclusion of questions related to social media use in the Electronic Application for Immigrant Visa and Alien Registration (DS-260). The consular officer would rely on this information to determine whether an applicant is eligible for a visa. Specifically, visa applicants would be asked to submit social media identifiers used in the previous five years.

Supreme Court

CERT. GRANTED

- [Stokeling v. United States](#)

No. 17-5554, 2018 U.S. LEXIS 2091 (April 2, 2018)

[Question Presented:](#) Whether a state robbery offense that includes "as an element" the common law requirement of overcoming "victim resistance" is categorically a "violent felony" under the only remaining definition of that term in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i) (an offense that "has as an element the use, attempted use, or threatened use of physical force against the person of another"), if the offense has been specifically interpreted by state appellate courts to require only slight force to overcome resistance.

CERT. DENIED

- [Taskov v. Sessions](#)

No. 17-7662, 2018 U.S. LEXIS 2118 (April 2, 2018)

No questions presented are available at this time.

First Circuit

- [Olmos-Colaj v. Sessions](#)

No. 16-2388, 2018 WL 1542030 (1st Cir. Mar. 29, 2018) (WOR) (Due Process)

The First Circuit denied the PFR, rejecting the petitioners' due process challenges where a hearing lasted three days when their counsel represented it would last three hours, an expert's availability did not correspond with the regular hearing schedule of the court, and the IJ proposed to accept an offer of proof that the expert would testify consistently with her written reports. The court also upheld the determination that the petitioners did not show that the Guatemalan government is unable or unwilling to protect them as in every instance in which the petitioners sought help, the police responded to and assisted them. Lastly, the petitioners could not show a clear probability of future persecution where the last threatening incident occurred more than 14 years ago and the petitioners' mother and brother, who are of the same ethnicity, continue to live in Guatemala without being harmed.

Second Circuit

- [Wang v. Sessions](#)

No. 16-3009, 2018 WL 1598633 (2d Cir. Apr. 2, 2018) (unpublished) (Asylum-ACF)

The Second Circuit granted the PFR, holding that the petitioner's two omissions—one involving whether police officers "beat up" or "pushed" his mother, and another regarding whether the police summoned him for questioning after his two arrests—did not support an adverse credibility determination under the totality of the circumstances. The petitioner also submitted letters from his neighbor in China stating that the neighbor was aware of the petitioner's two arrests for practicing Buddhism and that the police continued to ask for information about the petitioner, a letter from his father stating that after the petitioner left China, "the police never gave up looking for him," and a letter from his cousin stating that the petitioner had been arrested twice in China for practicing Buddhism and that police "are still seeking his person."

- [Doe v. Sessions](#)

No. 16-1256, 2018 WL 1526053 (2d Cir. Mar. 29, 2018) (Aggravated Felony; Controlled Substances; CAT)

The Second Circuit denied in part the PFR, upholding the BIA's determination that the petitioner was removable by comparing the statute of conviction to the federal drug schedules in place at the time of conviction rather than at the time of removal proceedings. The court also granted in part the PFR, concluding that the agency overlooked key evidence and mischaracterized the record in evaluating the petitioner's CAT claim when it determined that the petitioner conceded that only one of his co-defendants knew about his cooperation with the government.

Fourth Circuit

- [United States v. Townsend](#)

No. 16-6443, 2018 WL 1547107 (4th Cir. Mar. 30, 2018) (Crime of Violence)

The Fourth Circuit determined that a conviction for assault with a deadly weapon with intent to kill inflicting serious injury in violation of N.C. Gen. Stat. § 14-32(a) is a crime of violence under the "force" clause of the ACCA's 18 U.S.C. § 924(e)(2)(B), which is analogous to 18 U.S.C. § 16(a). Specifically, the court determined that the offense is categorically a violent felony under the "force" clause of the ACCA because the intent to kill element of the offense requires proof of a specific intent to kill and therefore requires proving a mens rea greater than negligence or recklessness.

Eighth Circuit

- [Lopez-Coronado de Lopez v. Sessions](#)

No. 16-4457, 2018 WL 1597394 (8th Cir. Apr. 3, 2018) (Asylum-Persecution)

The Eighth Circuit denied the PFR, upholding the agency decision that the petitioner did not suffer harm rising to the level of persecution and stating that minor beatings, unfulfilled threats of physical injury, and low-level intimidation or harassment normally do not amount to persecution. The court also upheld the BIA's determination that the petitioner did not establish a well-founded fear of future persecution where she legally separated from her husband, her only reported trouble with him after separating was a set of abusive text messages, which ceased after she changed her telephone number, he complied with a judge's direction that he should not enter her house, and where a male neighbor she fears is now incarcerated.

- [United States v. Swopes](#)

No. 16-1797, 2018 WL 1525825 (8th Cir. Mar. 29, 2018) (Crime of Violence)

The Eighth Circuit determined that a second-degree robbery conviction in violation of Mo. Rev. Stat. § 569.030.1 (1979) is a crime of violence under the "force" clause of the ACCA's 18 U.S.C. § 924(e)(2)(B), which is analogous to 18 U.S.C. § 16(a). Specifically, the court determined that the Missouri second-degree robbery statute required the use or threatened use of violent force and overruled the panel decision to the contrary in *United States v. Bell*, 840 F.3d 963 (8th Cir. 2016). Note: Effective January 1, 2017, Missouri amended its second-degree robbery statute to require "physical injury to another person," Mo. Rev. Stat. § 570.025.1; the court only addressed the second-degree robbery statute in effect at the time of conviction in 1994.

Ninth Circuit

- [Marinelarena v. Sessions](#)

No. 14-72003, 2018 WL 1547382 (9th Cir. Mar. 29, 2018) (Cancellation; Burden of Proof)

The Ninth Circuit ordered rehearing en banc. The prior panel opinion, *Marinelarena v. Sessions*, 869 F.3d 780 (9th Cir. 2017), shall not be cited as precedent by or to any court of the Ninth Circuit. The panel decision had reaffirmed that an alien could carry his or her burden of demonstrating eligibility for cancellation of removal under the modified categorical approach based on an inconclusive record of conviction.

- [Coronado v. Sessions](#)

No. 15-71445, 2018 WL 1573562 (9th Cir. Apr. 2, 2018) (unpublished) (Ineffective Assistance of Counsel)

The Ninth Circuit granted the PFR, remanding to the BIA with instructions to order a new hearing on the petitioner's application for cancellation of removal, where the Government conceded that the petitioner's attorney's performance before and during the removal hearing was deficient and in light of the IJ's comment, "I do think it's a close case." The court concluded that the attorney's deficient performance prejudiced the petitioner because it "may have affected the outcome of the proceedings."

- [Truong v. Sessions](#)

No. 13-72956, 2018 WL 1548195 (9th Cir. Mar. 30, 2018) (unpublished) (Waivers)

The Ninth Circuit granted the PFR, because the BIA erred in concluding that the petitioner's entry on a K-1 fiancée visa pretermitted her eligibility for a waiver under section 237(a)(1)(H) of the Act. While the BIA concluded that the petitioner was ineligible for a fraud waiver because she cannot adjust status to lawful permanent residence via her qualifying relative for the fraud waiver—her United States citizen husband—the court concluded that the petitioner's ability to adjust status is irrelevant to her fraud waiver eligibility.

- [Al Dahri v. Sessions](#)

No. 15-72069, 2018 WL 1465411 (9th Cir. Mar. 26, 2018) (unpublished) (Asylum)

The Ninth Circuit denied the PFR, upholding the BIA's determination that the petitioner is statutorily ineligible for asylum under section 101(a)(42) of the Act because he "ordered, incited, assisted, or otherwise participated in the persecution of" political opponents. The Ninth Circuit declined to determine whether [Matter of D-R-](#), 27 I&N Dec. 105 (BIA 2017) supersedes the standard outlined in *Miranda Alvarado v. Gonzales*, 449 F.3d 915 (9th Cir. 2006) because the petitioner is statutorily ineligible for asylum under either standard.

Eleventh Circuit

- [Choizilme v. Sessions](#)

No. 15-13845, 2018 WL 1545548 (11th Cir. Mar. 30, 2018) (Aggravated Felony; Controlled Substances)

The Eleventh Circuit denied the PFR, agreeing with the BIA's analysis in [Matter of L-G-H-](#), 26 I&N Dec. 365 (BIA 2014) and concluding that "illicit trafficking" under section 101(a)(43)(B) of the Act does not require a specific mens rea of knowledge of the illicit nature of the controlled substance being trafficked. Consistent with *Matter of L-G-H-* and *Spaho v. U.S. Att'y Gen.*, 837 F.3d 1172 (11th Cir. 2016), the court concluded that the BIA properly determined that the petitioner's 2006 conviction for sale of cocaine in violation of Fla. Stat. § 893.13(1)(a)(1) qualifies as an illicit-trafficking aggravated felony under the Act, making the petitioner ineligible for cancellation of removal.